

**LAW OFFICE OF AMY JANE AGNEW**

Honorable Loretta A. Preska  
Senior Justice, United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

June 16, 2023

**VIA ECF**

**Re: Allen, et al. v. NYS DOCCS, et al., 19-cv-8173 (LP)(SN)**

Dear Judge Preska:

Plaintiffs write in response to the Court's direction to provide briefing on whether or not the preliminary injunction record is incorporated into the permanent injunction proceedings. At the conference, Defendant Moores' counsel suggested that the preliminary injunction record does not come in due to the different standards. (Tr. 15:14-20.) Fed. Rule Civ. P. 65(a)(2) clearly states:

*Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. **Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.** But the court must preserve any party's right to a jury trial.

Fed. Rule Civ. P. 65(a)(2); SEC v. N. Am. Research & Dev. Corp., 511 F. 2d 1217, 1217 (2d Cir. 1975), *cert denied*, 423 U.S. 850, 96 S. Ct. 49, 46 L. Ed. 47 (1975); Fed. Rule Civ. P. 65 notes of advisory committee – 1966 amendments.

In light of the above and no contrary authority, Plaintiffs respectfully request that the Court order that all admissible evidence submitted by the parties and relied upon by the Court for the preliminary injunction motion and hearing be incorporated into the permanent injunction trial scheduled to begin August 7, 2023.

As always, we thank the Court for its continuing courtesies.

Very truly yours,

/s/ **AJ Agnew**

Amy Jane Agnew, Esq.